

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

MID-MONTH MEETING MINUTES**

December 16, 2003

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

William Elkins, President
Ron Alvarado, Vice President
Anne Sheehan, Member
Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn
Report given by Laura Aguilera, Assistant Executive Officer

The Board was advised on the following:

- A. Governor Schwarzenegger's Executive Order on the promulgation of administrative regulations in recent years requires each state agency to provide various reports. The first report is due this week regarding the identification of any enforcement or attempt at enforcement of any guideline, bulletin, manual instruction, etc., which has not been adopted as a

**The State Personnel Board Summary Minutes can be obtained at the following Internet address: <http://www.spb.ca.gov/calendar.htm>

regulation. Within 90 days the State Personnel Board (SPB) is also required to identify all SPB regulatory actions since January 1999, including those actions already completed or in progress.

- B. The Joint Labor Management Committee on Discrimination in state civil service provided the SPB with a copy of their final report. It contains over 103 findings and recommendations. The Committee has requested an opportunity to present their findings at a future Board meeting.
- C. The SPB has completed a new video, with the assistance of the Production Studio at the Employment Development Department, regarding the Limited Examination and Appointment Program (LEAP). The video is designed to help raise awareness of state managers and supervisors about hiring qualified workers with disabilities through the LEAP program. The video is timely in that recent legislation AB268, which will become effective January 1, 2004, requires managers and supervisors to have 80 hours of supervisory training and that training must now include information on employment law relating to persons with disabilities. The video is ten minutes long and will be distributed to state agencies.
- D. Governor Schwarzenegger announced the appointment of Frank "Fred" Aguiar as the new Secretary of the State and Consumer Services Agency.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

Litigation

- A. International Union of Operating Engineers (IUOE) v. State Personnel Board (SPB) - The Public Employees Relations Board has issued its decision finding that the SPB violated the Dills Act by issuing decisions refusing to approve the Board of Adjustment's decisions as settlements, notwithstanding the fact that the Board's refusal to do so was based on its legal position, being litigated in the courts, that the Board of Adjustment process is unconstitutional as violating the constitutional mandate that the SPB review discipline. The Board has 20 days to file exceptions.

- B. State Personnel Board v. California State Employees Association (CSEA) - The appellate court for the Third District Court of Appeal has overturned the trial court ruling invalidating the Post and Bid process negotiated by the Department of Personnel Administration and CSEA for a number of classes, that mandates 50% of appointments and promotions to vacant positions go to the employee in the top 3 ranks of an eligibility list who has the most statewide or other seniority regardless of whether that employee is otherwise qualified for the specific position being filled, so long as that employee has had no discipline in the prior year and is currently performing at a satisfactory level.
- C. Sulier v. State Personnel Board - The Sacramento Superior Court denied the department's writ petition in part and granted it in part after reviewing the Board's precedential decision in which the Board revoked appellant's demotion based on the department's failure to comply with the one year statute of limitations set forth in the Peace Officers Procedural Bill of Rights (POBOR). The court held that SPB does have jurisdiction over POBOR issues, but found that the Board erred in finding that the department was required to serve formal notice of adverse action within the one year period. Instead, the court held that a letter notifying the employee of the department's intent to take adverse action was sufficient. Given that the Board indicated in its decision that it adopted the Administrative Law Judge's findings of fact on the underlying merits (based on allegations that he provided confidential information about one inmate to another inmate) the court ordered the matter remanded to the SPB only on the issue of penalty.
- D. Elliot v. State Personnel Board - The Superior Court sustained State Personnel Board's decision sustaining termination of appellant for engaging in inappropriate conduct towards a female student. Elliot has appealed.

Other

- A. SPB's Council of Counsels met December 3, 2003 to discuss issues of mutual concern.

- B. Workforce Labor and Development Agency - Chief Counsel's meeting scheduled for January 13, 2004. Elise Rose has been asked to address the group on current SPB issues.

4. REPORT ON LEGISLATION - Sherry Hicks

No report given

BOARD ACTIONS

- The Board voted to appoint Laura Aguilera, Assistant Executive Officer, as Interim Executive Officer of the State Personnel Board.
VOTE: Elkins, Alvarado, Sheehan, Tom - Aye.
- The Board voted to send a request to Governor Schwarzenegger asking that he issue an Executive Order, that communicates the Administration's policy and support for equal employment opportunity and non discrimination in employment, in the California State Civil Service System.
VOTE: Elkins, Alvarado, Sheehan Tom - Aye.

5. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES OF DECEMBER 2, 2003

ACTION: Adopted on December 16, 2003.

VOTE: Elkins, Alvarado, Sheehan, Tom - Aye.

6. ACTION ON SUBMITTED ITEMS
(See Minutes Pages 16-17)

These items have been taken under submission by the State Personnel Board at a prior meeting. This list does not include evidentiary cases, as those cases are listed separately by category.

7. EVIDENTIARY CASES

On December 16, 2003, the Board adopted by vote as indicated below, the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Alvarado, Sheehan, Tom - Aye.

A. BOARD CASES SUBMITTED

These cases have been taken under submission by the State Personnel Board at a prior meeting.

DAVID ADAMS, CASE NO. 02-3301

Appeal from dismissal

Correctional Officer

Jamestown - Sierra Conservation Center

California Department of Corrections

ACTION: On December 16, 2003, the Board issued a written decision adopting the Administrative Law Judges proposed decision modifying the dismissal to an 11-month suspension. Vice President Alvarado, dissented.

ELEANORE CHASSEY, CASE NO. 03-1173

Appeal from five-day suspension

Administrative Law Judge I

Unemployment Insurance Appeals Board

NO ACTION

RICHARD COELHO, CASE NO. 02-1796R

Appeal from constructive medical termination

Fish and Game Warden

Department of Fish and Game

NO ACTION

CYNTHIA GEORGE, CASE NOS. 02-4017 &
03-1058

Appeal from a two-week and a three-week suspension

Administrative Law Judge

Unemployment Insurance Appeals Board

NO ACTION

B. CASES PENDING

• Oral Arguments

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

NONE

C. CHIEF COUNSEL RESOLUTIONS

- Court Remands

These cases have been remanded to the Board by the court for further Board action.

VALERIE GODFREY, CASE NO. 98-1070

Appeal from dismissal

Youth Correctional Counselor

Department of Youth Authority

ACTION: On December 16, 2003, the Board adopted the Chief Counsel's resolution setting aside the Board's 1998 decision and remanding the matter to an evidentiary hearing to consider new evidence consistent with the appellate court's decision.

- Stipulations

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

ALFRED MYAH, CASE NO. 03-0195

Appeal from four step reduction in salary for twelve months

Senior Psychiatric Technician

Department of Developmental Services

ACTION: On December 16, 2003, the Board adopted a resolution approving the settlement reached by the parties.

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

- Proposed Decisions

These are ALJ proposed decisions submitted to the Board for the first time.

JEFFREY BRIDDLE, CASE NO. 03-2346

Appeal from five working days suspension

Facility Captain

High Desert State Prison - Susanville

Department of Corrections

ACTION: Five working days suspension sustained.

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TROY CRAWFORD, CASE NO. 03-1311
Appeal from 15 days suspension
Correctional Officer
Ironwood State Prison - Blythe
Department of Corrections
ACTION: Fifteen working days suspension sustained.

RAYMOND ERNANDEZ, CASE NO. 01-4251
Appeal from five percent reduction in salary for
six months
Correctional Officer
California Institution for Men - Chino
Department of Corrections
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

DONALD HERMANS, CASE NO. 03-0384
Appeal from dismissal
Correctional Officer
California State Prison - Lancaster
Department of Corrections
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

DONALD KUNKEL, CASE NO. 03-1315
Appeal from six months suspension
Caltrans Equipment Operator II
Department of Transportation
ACTION: Six months suspension sustained.

CARMEN MILLET, CASE NO. 03-2252
Appeal from five percent reduction in salary for
six months
Psychiatric Technician
Department of Developmental Services
ACTION: Five percent reduction in salary for six
months modified to a formal reprimand.

ROSE PAYAN, CASE NO. 02-4213
Appeal from rejection during probationary period
Public Utilities Regulatory Analyst III
Public Utilities Commission
ACTION: Rejection during probationary period
sustained.

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NANCY SEARS, CASE NO. 02-2444
Appeal from two-step reduction in
salary for 12 months and transfer/reassignment
Parole Agent I (Adult Parole)
Department of Corrections - Sacramento
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

CLAUDE SIMS, CASE NO. 02-2680
Appeal from suspension for sixty workdays
Correctional Officer
Richard J. Donovan State Prison - San Diego
Department of Corrections
ACTION: Sixty working days suspension
sustained.

ELANGO VAN SITTRAMBARAM, CASE NO. 03-2401
Appeal from suspension for six months
Student Administration Technical
Programmer/Analyst
California State University - Long Beach
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

DINAH WAINWRIGHT, CASE NO. 02-0985
Appeal from ten percent reduction in salary for
six months
Accounting Technician
Department of the Youth Authority
ACTION: Ten percent reduction in salary for six months
sustained.

- Proposed Decisions Taken Under Submission At Prior Meeting

These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

- Proposed Decisions After Board Remand

NONE

- Proposed Decisions After SPB Arbitration

ROBERT RICKMAN, CASE NO. 03-2991
Appeal from five-day suspension
Officer
California Highway Patrol
ACTION: Five-day suspension sustained.

E. PETITIONS FOR REHEARING

- On ALJ Proposed Decisions Adopted By The Board
The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

DARRYL HINES, CASE NO. 02-0837P
Appeal from withdrawal of dismissal Appeal
Correctional Sergeant
Substance Abuse Treatment Facility - Corcoran
Department of Corrections
ACTION: Petition for rehearing filed by
appellant denied.

FERNANDO JIMENEZ, CASE NO. 03-1202P
Appeal from Constructive Medical
Termination/Suspension
Youth Correctional Officer
Department of the Youth Authority - Whittier
ACTION: Petition for Rehearing filed by
respondent denied.

YEVGENIY NEYMAN, CASE NO. 01-2967P
Appeal from Rejection During Probation
Staff Programmer Analyst (Specialist)
Board of Equalization
ACTION: Petition for rehearing filed by
appellant denied.

VINCE RENFROW, CASE NO. 02-1377P
Appeal from dismissal
Correctional Officer
California State Prison - San Quentin
Department of Corrections
ACTION: Petition for rehearing filed by
appellant denied.

- On Whistleblower Notice of Findings

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

DORYANNA ANDERSON-JOHNSON, CASE
NO.00-1687
Appeal from denial of reasonable accommodation
Correctional Lieutenant
California Rehabilitation Center - Norco
Department of Corrections
NO ACTION

SAMUEL BRYANT, CASE NO. 00-4238
Appeal from dismissal
Youth Correctional Officer
Department of Youth Authority
NO ACTION

RANDALL DODSON, Case No. 03-1587
Appeal from non-punitive termination
Caltrans Equipment Operator I
Department of Transportation
NO ACTION

FRANK GARCIA, CASE NO. 03-1906
Appeal from Dismissal
Caltrans Highway Maintenance Worker
Department of Transportation
NO ACTION

THEODORE HUGHING, CASE NO. 03-0354A
Appeal from Medical Termination/Demotion/Transfer
Food Service Supervisor I
Department of Developmental Services
NO ACTION

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MARY HUTTNER, CASE NO. 02-1690
Appeal from demotion
Staff Services Manager I to the position of Associate
Health Program Advisor (top step)
Department of Health Services
NO ACTION

MAMIE JONES, CASE NO. 02-4441
Appeal from ten percent reduction in
Salary for five months
Dispatcher Clerk
Department of Transportation
NO ACTION

PAUL H. KEMP, Case No. 01-2841
Appeal from dismissal
Teacher Assistant - Youth Correctional
Reception Center and Clinic - Sacramento
Department of the Youth Authority
NO ACTION

FRANK OLIVAS, CASE NO. 02-3390
Appeal from demotion
Correctional Sergeant to Correctional Officer
Blythe - State Prison
Department of Corrections
NO ACTION

NANCY VALENTINO, CASE NO. 03-0699
Appeal from dismissal
Psychiatric Technician
Department of Developmental Services
NO ACTION

BOBBY WANG, CASE NO. 02-2684
Appeal from dismissal
Motor Vehicle Field Representative
Department of Motor Vehicles
NO ACTION

BEVERLY WILSON, CASE NO. 03-1150
Appeal from dismissal
Administrative Support Assistant II
California State University
NO ACTION

8. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION
18671.1 EXTENSION (See Minutes Pages 20-21)

9. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

On December 16, 2003, the Board adopted by vote as indicated below the following decisions presented by Laura Aguilera, Interim Executive Officer, California State Personnel Board.

VOTE: Elkins, Alvarado, Sheehan, Tom - Aye.

TROY CASTILLO, CASE NO. 03-0499
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

STEPHEN CHILDS, CASE NO. 03-1045
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

TANYA COLLEY, CASE NO. 03-0498
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

GARY DODSON, CASE NO. 02-3922
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

ALVIN JENKINS, CASE NO. 02-2850
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

BERTRAND JONES, CASE NO. 03-0717
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

APRIL MOORE, CASE NO. 03-1025
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ALLEN NEWSOME, CASE NO. 03-1048
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

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JOSE ORTIZ, JR., CASE NO. 03-0178
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

MICHAEL RODRIGUEZ, CASE NO. 02-3273
Classification: Youth Correctional Counselor
California Youth Authority
ACTION: DENIED

SHANNON STEWART, CASE NO. 03-0094
Classification: Correctional Officer
Department of Corrections
ACTION: Retracted from agenda by State Personnel Board
staff, not for Board consideration

JULIAN TAYLOR, CASE NO. 02-4132
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

DON THOMAS, CASE NO. 02-3863
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SANISA VALDOVINOS, CASE NO. 02-2142
Classification: Cadet, CHP
California Highway Patrol
ACTION: GRANTED

ANDREA VICK, CASE NO. 03-0093
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

BILLY XIONG, CASE NO. 03-0321
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

On December 16, 2003, the Board adopted by vote as indicated below the following decisions presented by Laura Aguilera, Interim Executive Officer, California State Personnel Board.

VOTE: Elkins, Alvarado, Sheehan, Tom - Aye.

(Psychological Screening)

ANGIE SANCHEZ, CASE NO. 03-1412
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

C. PSYCHOLOGICAL SCREENING CASES

On December 16, 2003, the Board adopted by vote as indicated below the following decisions presented by Laura Aguilera, Interim Executive Officer, California State Personnel Board.

VOTE: Elkins, Alvarado, Sheehan, Tom - Aye.

DANIEL CHAVEZ, CASE NO. 03-3056
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

TERRY LEE, CASE NO. 03-2268
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

10. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

- (1) DEPUTY EXECUTIVE OFFICER, ADMINISTRATION DIVISION
The Victim Compensation & Government Claims Board proposes to allocate the above position to the CEA category. The Deputy Executive Officer, Administration Division is responsible for the overall policy development and management of the Victim Compensation & Government Claims Board's administrative operations, which interface and impact the general function and efficiency of the Victim Compensation & Government Claims Board's entire operation.

- (2) CHIEF, LEGISLATION, PUBLIC AFFAIRS & COMMUNICATION
The Victim Compensation & Government Claims Board proposes to allocate the above position to the CEA category. The Chief, Legislation, Public Affairs & Communication directly influences the Victim Compensation & Government Claims Board's development and implementation of legislation and statewide policies relating to victim compensation, restitution and recovery, government claims, and hearing.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO
ESTABLISH NEW CEA POSITIONS

- (1) DIRECTOR, CONSUMER AND INDUSTRY OUTREACH,
DEPARTMENTAL SERVICES BUREAU
The Department of Insurance's request to establish the above position to the CEA category has been approved effective November 14, 2003.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERLY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

2. VOCATIONAL INSTRUCTOR (SAFETY) (VARIOUS SPECIALTIES).
Departments of Mental Health and Developmental Services.
(Hearing held December 3, 2002).

NO ACTION

3. ANSWERS OR APPEALS FILED WITH STATE PERSONNEL BOARD
State Personnel Board (SPB) staff is proposing to adopt new Rule 63 to require, in part, that answers or appeals filed with SPB, requesting that a hearing or investigation be conducted by SPB, notify the responding party of all planned affirmative defenses and requests for relief.
(Hearing held February 3, 2003).

ACTION: On December 16, 2003, adopted Board decision to retract item from agenda.

VOTE: Elkins, Alvarado, Sheehan, Tom - Aye.

4. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added.
(Presented to Board March 4, 2003).

NO ACTION

5. PSC NO. 03-04

Appeal of the California Department of Education and McGeorge School of Law from the Executive Officer's April 30, 2003, disapproval of a contract for special education mediation conferences and due process hearings.
(Hearing held October 7, 2003).

ACTION: On December 16, 2003, the Board requested that the State Personnel Board send a letter of inquiry to the parties involved for clarification of specified issues.

VOTE: Elkins, Alvarado, Sheehan, Tom - Aye.

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

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I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on December 16, 2003.

VOTE: Elkins, Alvarado, Sheehan, Tom - Aye.

LAURA AGUILERA
Interim Executive Officer
California State Personnel Board

CORRECTION

In the Summary Minutes of December 2, 2003, page 2, Report of Chief Counsel, Legal News, the two website addresses referred to were listed incorrectly. The correct website addresses are shown below:

Schifando v. City of Los Angeles - decision can be found at:
<http://www.courtinfo.ca.gov/opinions/documents/S106660.PDF>

Department of Health Services v. Superior Court (McGuiness) -
decision can be found at:
<http://www.courtinfo.ca.gov/opinions/documents/S103487.PDF>